

## APPELLATE CIVIL.

*Before Sir Lionel Leach, Chief Justice, and  
Mr. Justice Patanjali Sastri.*

K. SUNDARESA IYER (PLAINTIFF), APPELLANT,

v.

THE SARVAJANA SOWKIABI VIRDHI NIDHI,  
LTD., BY SECRETARY P. S. MANIKKAM CHETTIAR,  
(DEFENDANT), RESPONDENT.\*

*Specific Relief Act (I of 1877), sec. 42 proviso—Applicability—  
Property in custodia legis—Declaration of title to—Suit for  
—Consequential relief—Prayer for—Necessity.*

S obtained possession of certain jewels from their owner, the appellant (who was desirous of selling them), on the representation that he knew of a prospective purchaser to whom he desired to show the jewels. Having obtained possession of the jewels S pledged them with the respondent company. The appellant complained to the police and as the result S was charged with and convicted of criminal breach of trust by the Magistrate who directed the jewels to be returned to the respondent company on security being furnished. That order of the Magistrate was set aside on appeal by the Sessions Judge who directed the jewels to be delivered to the appellant unconditionally. In accordance with the order of the Sessions Judge the appellant obtained possession of the jewels on 21st December 1932. The order of the Sessions Judge was, however, set aside in revision by the High Court which directed that the jewels should be delivered to the respondent company. The appellant did not obey the order and on an application made by the respondent company the Magistrate issued a summons to the appellant calling upon him to produce and surrender the jewels. This he did on 11th June 1934, but on the same day he filed a suit in the Court of the District Munsif for a declaration that he was the absolute owner of the jewels, and obtained an interim order from the District Munsif directing the Magistrate to deposit the jewels

---

\* Letters Patent Appeal No. 80 of 1937.

in the District Munsif's Court pending the decision of the suit. The Magistrate complied with that order and the jewels subsequently remained in the District Munsif's Court.

*Held*, reversing the Courts below which had dismissed the suit on the ground that, as no consequential relief had been asked for, it could not be maintained in view of the proviso to section 42 of the Specific Relief Act, that it was not necessary for the appellant to ask for anything more than a mere declaration and that the suit as framed was maintainable.

At the time of the institution of the suit the jewels were in the possession of the Magistrate and therefore *in custodia legis* and have remained *in custodia legis*. The Court must deliver them to the person who shows a title.

*Sunder Singh-Mallah Singh Sanatan Dharam High School Trust, Indaura v. The Managing Committee, Sunder Singh-Mallah Singh Rajput High School, Indaura*(1), *Vedanayaga Mudaliar v. Vedammal*(2) and *Malaiyya Pillai v. Perumal Pillai*(3) followed.

*Natesa Ayyar v. Mangalathammal*(4) disapproved.

APPEAL preferred under Clause 15 of the Letters Patent against the judgment and decree of HORWILL J. dated 10th September 1937 and passed in Second Appeal No. 1144 of 1936 preferred against the decree of the Court of the Subordinate Judge of Coimbatore in Appeal Suit No. 128 of 1936 (Original Suit No. 507 of 1934, District Munsif's Court, Coimbatore).

*K. Rajah Ayyar and C. S. Krishnamurti Ayyar* for appellant.

*T. M. Krishnaswami Ayyar* for *K. V. Ramachandra Ayyar* for respondent.

The JUDGMENT of the Court was delivered by LEACH C.J.—The appellant filed a suit in the Court of the District Munsif of Coimbatore for a declaration that he was the absolute owner of certain jewels. At the time of the suit the jewels were in the possession

SUNDARESA  
v.  
SARVAJANA  
SOWKLABI  
VERDHI  
NIDHI, LTD.

LEACH C.J.

(1) I.L.R. [1938] Lah. 63 (P.C.).

(2) (1904) I.L.R. 27 Mad. 591.

(3) (1911) I.L.R. 36 Mad. 62.

(4) (1933) 38 L.W. 194.

SUNDARESA  
v.  
SARVAJANA  
SOWKIABI  
VIRDI  
NIDHI, LTD.  
LEACH C.J.

of the Court of the Sub-Divisional First Class Magistrate of Coimbatore. No consequential relief was asked for, and the question which we are called upon to decide is whether the suit could be maintained in view of the proviso to section 42 of the Specific Relief Act, which says that no Court shall make a declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. In 1932 the appellant was desirous of selling the jewels and he was approached by one Subba Rao, who represented that he knew of a prospective purchaser. On the representation that he desired to show the jewels to the prospective purchaser the appellant handed them over to him. This was on 3rd July 1932. Having obtained possession of the jewels Subba Rao pledged them for a total sum of Rs. 1,000 with the respondent company, which carries on a banking business in Coimbatore. When the appellant came to hear of this, he complained to the police and as the result Subba Rao was charged with criminal breach of trust under section 409 of the Indian Penal Code. On 26th October 1932 Subba Rao was convicted and sentenced to two years' rigorous imprisonment by the Sub-Divisional Magistrate, who directed that the jewels should be returned to the respondent company on security being furnished. The appellant appealed to the Additional Sessions Judge of Coimbatore against the order of the Sub-Divisional Magistrate. The appeal was allowed and the Additional Sessions Judge directed that the jewels should be delivered to the appellant unconditionally. In accordance with this order the appellant obtained possession of the jewels from the Sub-Divisional Magistrate on 21st December 1932. In the meantime the respondent company had filed an application to this Court for the revision

of the order of the Additional Sessions Judge. The application was heard on 10th August 1933 and was successful. This Court directed that the jewels should be delivered to the respondent company. The appellant did not obey the order and the respondent company was compelled to apply to the Sub-Divisional Magistrate to enforce it. The Sub-Divisional Magistrate accordingly issued a summons to the appellant calling upon him to produce and surrender the jewels. This the appellant did on 11th June 1934, but on the same day filed the suit out of which this Letters Patent Appeal arises, and obtained an interim order from the District Munsif directing the Sub-Divisional Magistrate to deposit the jewels in the District Munsif's Court pending the decision of the suit. The Sub-Divisional Magistrate complied with this order and the jewels have since remained in the District Munsif's Court.

SUNDARESA  
v.  
SARVAJANA  
SOWKIABI  
VIRDHI  
NIDHI, LTD.  
—  
LEACH C.J.

In the written statement the respondent company pleaded that it was a pledgee of the jewels in good faith and was entitled to the benefit of the pledge by reason of the provisions of sections 178 and 178-A of the Indian Contract Act. The respondent company also pleaded that the suit was bad because the appellant had omitted to include in his plaint a prayer for possession of the jewels. The District Munsif found that the respondent company had accepted the pledge of the jewels in good faith and that it was protected by sections 178 and 178-A of the Contract Act, but dismissed the suit on the ground that the appellant was not entitled to maintain it without a prayer for consequential relief. The appellant appealed to the Subordinate Judge of Coimbatore who considered that the respondent company had not acted in good faith and therefore was not entitled to

SUNDARESA  
v.  
SARVAJANA  
SOWKIABI  
VIRDI  
NIDHI, LTD.  
—  
LEACH C.J.

the benefit of the pledge, but he agreed with the District Munsif that the suit was not maintainable in view of the proviso to section 42 of the Specific Relief Act. The result was that he affirmed the decree dismissing the suit. The appellant then filed an appeal to this Court. This was heard by HORWILL J. who also held that the suit was not maintainable without a prayer for consequential relief.

The learned Judge discussed the decisions of this Court in *Vedanayaga Mudaliar v. Vedammal*(1), *Malaiyya Pillai v. Perumal Pillai*(2) and *Natesa Ayyar v. Mangalathammal*(3) and came to the conclusion that the law was correctly stated in the case last mentioned. We do not share this opinion, but, before examining the cases cited, there is an earlier decision of this Court which calls for mention, namely, the decision of TURNER C.J. and MUTTUSWAMI AYYAR J. in *Ramanuja v. Devanayaka*(4). In that case TURNER C.J. observed :

“ Possession, whether it is of property or of an office, may be regarded either as a physical fact, or in contemplation of the legal right to it, and it is in the former sense it should be understood in coming to a finding under section 42 of the Specific Relief Act, as to whether the plaintiff is, or is not, able to seek further relief. It may be observed that the term relief presupposes the actual withholding of the fruit of the right of which a declaration is sought, and not its mere denial. A declaratory decree is all that a plaintiff requires when he has no need of the assistance of the Court to replace him in possession.”

In our opinion the law is here correctly stated.

In *Vedanayaga Mudaliar v. Vedammal*(1) the facts were these. A minor was entitled to a certain property which was in the possession of his mother. The

(1) (1904) I.L.R. 27 Mad. 591.

(2) (1911) I.L.R. 36 Mad. 62.

(3) (1936) 38 L.W. 194.

(4) (1885) I.L.R. 8 Mad. 361.

plaintiff filed an application under the Guardians and Wards Act for an order appointing him guardian of the property of the minor. Pending the hearing of this application he was appointed the receiver of the property and in this capacity he took possession of it from the mother. The validity of the order appointing the plaintiff receiver was challenged in an appeal to this Court, which held that the order had been wrongly passed and directed that the mother should be replaced in possession of the property. The minor was murdered and the receiver filed a suit for a declaration that he was entitled to the property of the minor as the nearest reversioner. The mother pleaded that the suit could not be maintained without a prayer for possession, but the Court held that the suit was maintainable. At the time the suit was filed the possession of the property was neither with the plaintiff nor with the mother, but was *in custodia legis*. As the possession was the possession of the Court all that was necessary was a declaration of title. That seems to us to be exactly the position here.

In *Malaiyya Pillai v. Perumal Pillai*(1) it was held that before the proviso to section 42 of the Specific Relief Act applied it must be shown that the defendant was in possession, and that as against him the plaintiff could obtain an order for delivery of possession. In that case proceedings were taken under sections 145 and 146 of the Code of Criminal Procedure and a receiver was appointed to hold possession of the property in dispute. The order was subsequently cancelled by this Court and the receiver was directed to deliver possession to the defendant. At the time the suit was filed the property was still in the possession

SUNDARESA  
v.  
SARVAJANA  
SOWKIAHI  
VIRDIH  
NIDHI, LTD.  
LEACH C.J.

(1) (1911) I.L.R. 36 Mad. 62.

SUNDARESA  
v.  
SARVAJANA  
SOWKIAJI  
VIEDHI  
NIDHI, LTD.  
LEACH C.J.

of the receiver. It was held that in such circumstances there was no necessity to claim consequential relief. This decision is in complete accord with the decision in *Vedanayaga Mudaliar v. Vedammal*(1). These appeals were heard by Division Benches and are binding on us. But there is also a decision of the Privy Council to the same effect; *Sunder Singh-Mallah Singh Sanatan Dharam High School Trust, Indaura v. The Managing Committee, Sunder Singh-Mallah Singh Rajput High School, Indaura*(2). The suit there had reference to a school. At the time the suit was filed the school was in the possession of the founder, who was merely holding it until certain disputes had been decided by the Court. He was willing to hand the property over to those declared to be entitled to it. The plaintiffs merely asked for a declaratory decree. The Subordinate Judge considered that it was necessary to ask for possession, his reason being that the plaintiffs were neither in possession nor in control of the management of the school. As a decree for possession was not sought, he dismissed the suit. On appeal the High Court held that the Subordinate Judge was wrong. The defendants were not in possession or in a position to deliver possession of the properties and there was no further relief available to the plaintiffs against the defendants. The Judicial Committee agreed with the High Court.

I will now state the facts in *Natesa Ayyar v. Mangalathammal*(3). There the plaintiff was the widow of one Viswanatha Ayyar, who was also survived by his father and a brother. A mortgage had been executed in favour of the plaintiff's husband and on his death his father brought a suit on the mortgage

(1) (1904) I.L.R. 27 Mad. 591. (2) I.L.R. [1938] Lah. 63 (P.C.).

(3) (1933) 38 L.W. 194.

and obtained a decree, as a result of which certain moneys were brought into Court towards the satisfaction of the decree. The father instituted a suit as manager of the joint family and claimed that the mortgage formed part of the joint estate. The father died without withdrawing the moneys from Court and the surviving son then applied for payment out to him of the moneys as the legal representative of his father. The plaintiff objected to this and claimed that the mortgage was the separate property of her husband. She then filed a suit to obtain a declaration of her right to the moneys. PAKENHAM WALSH J. held that a prayer for consequential relief was essential. He considered that the case was distinguishable from *Vedanayaga Mudaliar v. Vedammal*(1) and *Malaiyya Pillai v. Perumal Pillai*(2). It is true that the decision in *Natesa Ayyar v. Mangalathammal*(3) was accepted as being correct in a Letters Patent Appeal which followed, but no reasons were given in the judgment. We do not agree that *Natesa Ayyar v. Mangalathammal*(3) was distinguishable. The question which arose there was really the same question which arose in *Vedanayaga Mudaliar v. Vedammal*(1) and in *Malaiyya Pillai v. Perumal Pillai*(2) and, if they were rightly decided, *Natesa Ayyar v. Mangalathammal*(3) was wrongly decided. Inasmuch as the judgment of PAKENHAM WALSH J. was approved of on appeal we have been asked to refer the present appeal to a Full Bench. It is not necessary to do so as the judgment of the Privy Council in *Sunder Singh-Mallah Singh Sanatan Dharam High School Trust, Indaura v. The Managing Committee, Sunder Singh-Mallah Singh Rajput High School, Indaura*(4) shows that *Vedanayaga*

SUNDARESA  
v.  
SARVAJANA  
SOWKIAJI  
VIRDI  
NIDHI, LTD.  
—  
LEACH C.J.

(1) (1904) I.L.R. 27 Mad. 591.

(2) (1911) I.L.R. 36 Mad. 62

(3) (1933) 38 L.W. 194.

(4) I.L.R. [1938] Lah. 63 (P.C.).

SUNDARESA  
v.  
SARVAJANA  
SOWKIAJI  
VIRDIH  
NIDHI, LTD.  
—  
LEACH C.J.

*Mudaliar v. Vedammal*(1) and *Malaiyya Pillai v. Perumal Pillai*(2) were rightly decided.

The fact that when the present suit was filed the jewels were in the possession of the Sub-Divisional Magistrate, who as the result of the decision of this Court in the revision application was bound to hand them to the respondent company unless otherwise directed, makes no difference. All the Court has to consider is, who has possession. The jewels have not been in the possession of the respondent company since 21st December 1932. At the time of the institution of the suit the jewels were *in custodia legis* and have remained *in custodia legis*. The Court must deliver them to the person who shows a title. Therefore it was not necessary for the appellant to ask for anything more than a mere declaration. The appeal will be allowed and a decree passed in terms of the prayer with costs throughout.

A.S.V.

---

(1) (1904) I.L.R. 27 Mad. 591.

(2) (1911) I.L.R. 36 Mad. 62.